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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-
 defendant

v.

APPLE INC.,

Defendant,
 Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF RACHEL S. BRASS IN
 SUPPORT OF DEFENDANT APPLE INC.'S
 ADMINISTRATIVE MOTION TO
 PARTIALLY SEAL DEPOSITION
 DESIGNATIONS**

Pursuant to Civil Local Rule 79-5, I hereby declare as follows:

1. I am an attorney licensed to practice in the State of California, and a member of the Bar of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for Defendant Apple Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary and confidential information, based on my personal experience representing Apple.¹ I have personal knowledge of the facts stated below and, if called as a witness, I could and would testify competently thereto. I submit this declaration in support of Apple’s Administrative Motion to Partially Seal Deposition Designations.

2. When a party seeks to seal records for use at trial, there is a “strong presumption in favor of access” that can be overcome only by “compelling reasons.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quotation marks omitted). The party seeking to seal the document or proceedings must “articulate compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.” *Id.* at 1178–79 (alteration, citation, and quotation marks omitted). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

3. Apple operates in an intensely competitive marketplace. It occupies a unique position as a leader with respect to a number of highly dynamic technologies. Apple has serious and legitimate concerns that competitors will be quick to pounce on any release of Apple’s highly sensitive, proprietary information in order to gain competitive advantage. As such, Apple takes extensive measures to protect the confidentiality of its proprietary information.

¹ Courts in this District routinely grant motions to seal on the basis of declarations of counsel submitted pursuant to Local Rule 79-5. *See, e.g., In Re Qualcomm Litig.*, No. 17-00108, Dkt. 398-1 (S.D. Cal. Mar. 3, 2018); *Avago Techs. U.S. Inc., et al. v. Iptronics Inc., et al.*, No. 10-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc., et al. v. Opentv Inc., et al.*, No. 13-00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am personally familiar with Apple’s safeguarding of proprietary information, but if the Court deems this declaration insufficient, Apple respectfully requests that it be permitted to file a further declaration supporting filing under seal.

1 4. The Court has “broad latitude” “to prevent disclosure of materials for many types of
2 information, including, *but not limited to*, trade secrets or other confidential research, development, or
3 commercial information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002)
4 (emphasis in original).

5 5. The Court has expressed a desire for these proceedings to be public. To that end, Apple
6 has carefully reviewed its depositions designations and now proposes only those redactions that are
7 essential.

8 6. Specifically Apple seeks only to seal non-public financial information. The public
9 disclosure of such information would cause Apple economic harm and put it at competitive
10 disadvantage. *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016),
11 *cert. denied sub nom. FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016) (finding there was a
12 compelling reason for sealing when records contain business information that could be used to harm a
13 litigant’s competitive standing). It would give Apple’s competition confidential information about
14 Apple’s business model and strategy. *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214,
15 1228 (Fed. Cir. 2013) (concluding the district court abused its discretion in denying a motion to seal
16 about “profit, cost, and margin data”).

17 7. The information Apple seeks to protect is foundational to its business, and Apple has
18 exerted great effort and undertaken substantial expense to protect such information. Apple has
19 narrowly tailored its sealing request so as to maximize the public’s access to court proceedings without
20 jeopardizing Apple’s business interests

21 8. Moreover, disclosure of the identified information could unduly influence the financial
22 markets. Apple’s investors rely on audited financial information to make investment decisions. If the
23 financial information discussed in the identified testimony were released, it could unduly influence the
24 market with information that may not have been analyzed and audited in the way public financial
25 disclosures are. Such disclosure could disrupt the markets.

26 9. I have met and conferred in good faith with counsel for Epic, including by telephone, in
27 an effort to narrow the documents and testimony that the parties propose to maintain under seal. This
28 process has resulted in narrowing the amount of designated confidential material and consequently

reduced the need for provisional sealing (pursuant to Local Rule 79-5(e)) of material designated by the other party as confidential.

10. Below is a chart detailing the specific items of Apple's that are sealable for the reasons explained herein.

Document or Portion of Document Sought to be Sealed	Evidence Offered in Support of Sealing
Deposition of Eddy Cue, 109:4–110:17	Brass Decl. ¶¶ 6–8
Deposition of Eddy Cue, 190:4–192:16	Brass Decl. ¶¶ 6–8

11. Pursuant to Local Rule 79-5(e), below is a list reflecting the information designated by Epic as confidential. Apple opposes the propose sealing of the deposition testimony of Joe Kreiner, and otherwise does not take a position on Epic's request for sealing:

Document or Portion of Document Sought to be Sealed	Reason for Sealing Offered by Epic
Deposition of Joe Kreiner, 32:13–14	Potential third-party confidential information
Deposition of Joe Kreiner, 32:25–33:4	Potential third-party confidential information
Deposition of Joe Kreiner, 35:20–36:6	Potential third-party confidential information
Deposition of Joe Kreiner, 37:4–8, 37:14	Potential third-party confidential information
Deposition of Joe Kreiner, 39:11–13	Potential third-party confidential information
Deposition of Joe Kreiner, 40:2–41:9	Potential third-party confidential information
Deposition of Joe Kreiner, 41:21–42:8	Potential third-party confidential information
Deposition of Joe Kreiner, 42:21–23	Potential third-party confidential information
Deposition of Joe Kreiner, 47:20–48:3	Potential third-party confidential information
Deposition of Joe Kreiner, 48:20–49:13	Potential third-party confidential information
Deposition of Joe Kreiner, 51:12–52:19, 52:23–53:14	Potential third-party confidential information

1	Deposition of Joe Kreiner, 54:15–16	Potential third-party confidential information
2	Deposition of Joe Kreiner, 57:10–16	Potential third-party confidential information
3	Deposition of Joe Kreiner, 60:18–61:11	Potential third-party confidential information
4	Deposition of Joe Kreiner, 64:3–4, 64:10–14	Potential third-party confidential information
5	Deposition of Joe Kreiner, 75:9–12, 75:15–76:8	Potential third-party confidential information
6	Deposition of Joe Kreiner, 77:6–78:6	Potential third-party confidential information
7	Deposition of Joe Kreiner, 80:1–2	Potential third-party confidential information
8	Deposition of Joe Kreiner, 80:9–12	Potential third-party confidential information
9	Deposition of Joe Kreiner, 81:6–83:22	Potential third-party confidential information
10	Deposition of Joe Kreiner, 85:13–86:21	Potential third-party confidential information
11	Deposition of Joe Kreiner, 87:6–21	Potential third-party confidential information
12	Deposition of Joe Kreiner, 88:14–15, 88:25–89:1	Potential third-party confidential information
13	Deposition of Joe Kreiner, 91:1–19	Potential third-party confidential information
14	Deposition of Joe Kreiner, 92:9–93:1	Potential third-party confidential information
15	Deposition of Joe Kreiner, 93:7–22	Potential third-party confidential information
16	Deposition of Joe Kreiner, 94:23–95:20	Potential third-party confidential information
17	Deposition of Joe Kreiner, 96:7–11	Potential third-party confidential information
18	Deposition of Joe Kreiner, 96:22–97:1	Potential third-party confidential information
19	Deposition of Joe Kreiner, 97:13–98:4	Potential third-party confidential information
20	Deposition of Joe Kreiner, 107:15–108:12	Potential third-party confidential information
21	Deposition of Joe Kreiner, 114:15–115:8	Potential third-party confidential information
22	Deposition of Joe Kreiner, 116:16–25	Potential third-party confidential information
23	Deposition of Joe Kreiner, 130:11–12	Potential third-party confidential information
24	Deposition of Joe Kreiner, 136:21–137:17	Potential third-party confidential information
25	Deposition of Joe Kreiner, 137:24–138:3	Potential third-party confidential information
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Deposition of Joe Kreiner, 138:7–10	Potential third-party confidential information
Deposition of Joe Kreiner, 138:13–16	Potential third-party confidential information
Deposition of Joe Kreiner, 140:15–19, 141:5–142:3	Potential third-party confidential information
Deposition of Joe Kreiner, 168:7, 11–20	Potential third-party confidential information
Deposition of Joe Kreiner, 191:20–23	Potential third-party confidential information
Deposition of Joe Kreiner, 215:7–23	Potential third-party confidential information
Deposition of Joe Kreiner, 229:7–17	Potential third-party confidential information
Deposition of Joe Kreiner, 229:19–23	Potential third-party confidential information
Deposition of Joe Kreiner, 260:17–18	Epic confidential information
Deposition of Joe Kreiner, 267:4–25	Potential third-party confidential information
Deposition of Haseeb Malik, 158:21–25	Epic confidential information
Deposition of Haseeb Malik, 181:10–20	Epic confidential information
Deposition of Mark Rein, 101:8–20	Potential third-party confidential information
Deposition of Mark Rein, 102:14–20	Potential third-party confidential information
Deposition of Mark Rein, 105:2–14	Potential third-party confidential information
Deposition of Mark Rein, 107:6–7	Potential third-party confidential information
Deposition of Mark Rein, 108:2–109:1	Potential third-party confidential information

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on April 27, 2021 at San Francisco, California.

/s/ Rachel S. Brass
Rachel S. Brass